

## Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85973494
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION (no change)	
ARGUMENT(S)	
<p>The examining attorney in the Office Action dated October 9, 2013, and maintained in the Final Office Action dated April 25, 2014, cites a merely descriptive refusal that PRIVATE BUSINESS CAPITAL merely describes a feature of applicant's services.</p> <p>Attached evidence from Webster's New College Dictionary defines "Capital" as (4) "wealth (money or property) owned or used in business by a person, corporation, etc., (6) "wealth, in whatever form, used or capable of being used to produce more wealth". "Capital" as used in the mark is as a noun and not verb. Services, such as lending services or banking services is action based. By the very nature of grammar, PRIVATE BUSINESS CAPITAL is not descriptive of applicant's services.</p> <p>Further, attached evidence shows that "BUSINESS CAPITAL" has been found to describe money invested in a business in common usage.</p> <p>The examining attorney argues that the wording PRIVATE BUSINESS CAPITAL describes "a type of private lending or private loan." By doing so, the examining attorney equates "wealth" and "investment" a thing, to actual services of banking and lending; these are not the same.</p> <p>There is a distinction between "wealth" and "investment" from the actual providing of services such as banking and lending. Applicant believes a descriptive refusal would be appropriate had applicant's identification of services in Class 36 included "investment services" or had applicant's mark be PRIVATE BUSINESS CAPITAL INVESTMENT, or PRIVATE BUSINESS CAPITAL BANKING, or PRIVATE BUSINESS CAPITAL LENDING. Only then, could applicant understand the examining attorney's argument that "when the mark is applied to the applicant's services, the consumer is immediately informed that the applicant lends PRIVATE BUSINESS CAPITAL."</p> <p>However, applicant's identification of services does <u>not</u> include "investment services" and applicant's mark is <u>not</u> PRIVATE BUSINESS CAPITAL INVESTMENT, PRIVATE BUSINESS CAPITAL BANKING, or PRIVATE BUSINESS CAPITAL LENDING. Because investment services is not part of the applicant's services, and because there is no modifier of the noun PRIVATE BUSINESS CAPITAL as part of the mark, the role of private business capital is unclear, and left to suggestion.</p> <p>The mark PRIVATE BUSINESS CAPITAL is <u>not</u> a descriptive feature of applicant's services, but instead a suggestive feature of applicant's services as a consumer needs to make that extra inference of</p>	

the role of PRIVATE BUSINESS CAPITAL. Applicant believes that arguments have been presented sufficiently to allow the descriptive refusal to be withdrawn and allow the application to proceed toward registration.

#### ALTERNATIVE REQUEST OF DISCLAIMER FOR DESCRIPTIVE FEATURES

Applicant has found another pending application, Serial No. 86387162 for “CAPITAL ONE INVESTING” for the services in class 36 of “ Brokerage in the field of stocks, bonds and funds; Brokerage of shares or stocks and other securities; Investment brokerage” for which the mark CAPITAL ONE INVESTING appears to be even more descriptive in light of the services filed for than applicant’s application. Yet, where applicant was issued a descriptive refusal, application Serial No. 86387162 for CAPITAL ONE INVESTING was issued an office action to disclaim the wording “CAPITAL” and “INVESTING” because it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s services, and thus is an unregistrable component of the mark.

In the alternative, should applicant’s mark continue to be found to be descriptive and not suggestive as applicant believes, applicant requests treatment by way of an opportunity to disclaim descriptive features of the mark, similar to that allowed of Serial No. 86387162 for CAPITAL ONE INVESTING.

#### NEW GENERIC ARGUMENT PRESENTED FOR THE FIRST TIME IN FINAL OFFICE ACTION

Lastly, the examining attorney in her final office action added for the first time, within the descriptive refusal, a new refusal that the applied-for mark may be generic in connection with the identified services. Applicant believes that in light of the newly generic argument presented for the first time to applicant, that applicant should have not been issued a final office action but instead, a non-final office action to properly allow applicant to address the generic refusal without it being the first and last opportunity to do so.

Respectfully submitted

#### EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
JPG FILE(S)	<a href="\\TICRS\EXPORT16\IMAGEOUT16\859\734\85973494\xml6\RFR0002.JPG">\\TICRS\EXPORT16\IMAGEOUT16\859\734\85973494\xml6\RFR0002.JPG</a>
	<a href="\\TICRS\EXPORT16\IMAGEOUT16\859\734\85973494\xml6\RFR0003.JPG">\\TICRS\EXPORT16\IMAGEOUT16\859\734\85973494\xml6\RFR0003.JPG</a>
ORIGINAL PDF FILE	<a href="#">evi_10824711795-20141027234537531669_.what_is_private_business_capital.pdf</a>
CONVERTED PDF FILE(S) (1 page)	<a href="\\TICRS\EXPORT16\IMAGEOUT16\859\734\85973494\xml6\RFR0004.JPG">\\TICRS\EXPORT16\IMAGEOUT16\859\734\85973494\xml6\RFR0004.JPG</a>
DESCRIPTION OF EVIDENCE FILE	website screenshot and photos of Webster's dictionary

#### SIGNATURE SECTION

/maria johnson/

<b>SIGNATORY'S NAME</b>	Maria Johnson
<b>SIGNATORY'S POSITION</b>	Attorney of record, California bar member
<b>SIGNATORY'S PHONE NUMBER</b>	858-964-8217
<b>DATE SIGNED</b>	10/27/2014
<b>AUTHORIZED SIGNATORY</b>	YES
<b>CONCURRENT APPEAL NOTICE FILED</b>	YES
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Mon Oct 27 23:52:09 EDT 2014
<b>TEAS STAMP</b>	USPTO/RFR-108.247.117.95- 20141027235209683586-8597 3494-5009718326894ac37516 bbd435ef05af01e3b9c9deb56 d258149c5b0aebb55e9-N/A-N /A-20141027234537531669

## Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85973494** has been amended as follows:

### ARGUMENT(S)

**In response to the substantive refusal(s), please note the following:**

The examining attorney in the Office Action dated October 9, 2013, and maintained in the Final Office Action dated April 25, 2014, cites a merely descriptive refusal that PRIVATE BUSINESS CAPITAL merely describes a feature of applicant's services.

Attached evidence from Webster's New College Dictionary defines "Capital" as (4) "wealth (money or property) owned or used in business by a person, corporation, etc., (6) "wealth, in whatever form, used or capable of being used to produce more wealth". "Capital" as used in the mark is as a noun and not verb. Services, such as lending services or banking services is action based. By the very nature of grammar, PRIVATE BUSINESS CAPITAL is not descriptive of applicant's services.

Further, attached evidence shows that "BUSINESS CAPITAL" has been found to describe money

invested in a business in common usage.

The examining attorney argues that the wording PRIVATE BUSINESS CAPITAL describes “a type of private lending or private loan.” By doing so, the examining attorney equates “wealth” and “investment” a thing, to actual services of banking and lending; these are not the same.

There is a distinction between “wealth” and “investment” from the actual providing of services such as banking and lending. Applicant believes a descriptive refusal would be appropriate had applicant’s identification of services in Class 36 included “investment services” or had applicant’s mark be PRIVATE BUSINESS CAPITAL INVESTMENT, or PRIVATE BUSINESS CAPITAL BANKING, or PRIVATE BUSINESS CAPITAL LENDING. Only then, could applicant understand the examining attorney’s argument that “when the mark is applied to the applicant’s services, the consumer is immediately informed that the applicant lends PRIVATE BUSINESS CAPITAL.”

However, applicant’s identification of services does not include “investment services” and applicant’s mark is not PRIVATE BUSINESS CAPITAL INVESTMENT, PRIVATE BUSINESS CAPITAL BANKING, or PRIVATE BUSINESS CAPITAL LENDING. Because investment services is not part of the applicant’s services, and because there is no modifier of the noun PRIVATE BUSINESS CAPITAL as part of the mark, the role of private business capital is unclear, and left to suggestion.

The mark PRIVATE BUSINESS CAPITAL is not a descriptive feature of applicant’s services, but instead a suggestive feature of applicant’s services as a consumer needs to make that extra inference of the role of PRIVATE BUSINESS CAPITAL. Applicant believes that arguments have been presented sufficiently to allow the descriptive refusal to be withdrawn and allow the application to proceed toward registration.

#### ALTERNATIVE REQUEST OF DISCLAIMER FOR DESCRIPTIVE FEATURES

Applicant has found another pending application, Serial No. 86387162 for “CAPITAL ONE INVESTING” for the services in class 36 of “ Brokerage in the field of stocks, bonds and funds; Brokerage of shares or stocks and other securities; Investment brokerage” for which the mark CAPITAL ONE INVESTING appears to be even more descriptive in light of the services filed for than applicant’s application. Yet, where applicant was issued a descriptive refusal, application Serial No. 86387162 for CAPITAL ONE INVESTING was issued an office action to disclaim the wording “CAPITAL” and “INVESTING” because it merely describes an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s services, and thus is an unregistrable component of the mark .

In the alternative, should applicant’s mark continue to be found to be descriptive and not suggestive as applicant believes, applicant requests treatment by way of an opportunity to disclaim descriptive features of the mark, similar to that allowed of Serial No. 86387162 for CAPITAL ONE INVESTING.

#### NEW GENERIC ARGUMENT PRESENTED FOR THE FIRST TIME IN FINAL OFFICE ACTION

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Respectfully submitted

**EVIDENCE**

Evidence in the nature of website screenshot and photos of Webster's dictionary has been attached.

**JPG file(s):**

[Evidence-1](#)

[Evidence-2](#)

**Original PDF file:**

[evi\\_10824711795-20141027234537531669\\_.what\\_is\\_private\\_business\\_capital.pdf](#)

**Converted PDF file(s) ( 1 page)**

[Evidence-1](#)

**SIGNATURE(S)****Request for Reconsideration Signature**

Signature: /maria johnson/ Date: 10/27/2014

Signatory's Name: Maria Johnson

Signatory's Position: Attorney of record, California bar member

Signatory's Phone Number: 858-964-8217

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85973494

Internet Transmission Date: Mon Oct 27 23:52:09 EDT 2014

TEAS Stamp: USPTO/RFR-108.247.117.95-201410272352096

83586-85973494-5009718326894ac37516bbd43

5ef05af01e3b9c9deb56d258149c5b0aebb55e9-

N/A-N/A-20141027234537531669

Webster's  
New College  
Dictionary

**cap-ill-la-ceous** (kap'ə lă'shəs) *adj.* [L *capillaceus*, hairlike < *capillus*, hair + *-aceus*, *-ACEOUS*] 1 having hairlike filaments 2 like a hair or thread

**cap-ill-lar-ity** (kap'ə ler'i tē) *n.* [Fr *capillarité* < L *capillaris*: see *capillary*] 1 the state of being capillary 2 the property of exerting or having capillary attraction 3 CAPILLARY ATTRACTION

**cap-ill-lary** (kap'ə ler'ē; Brit kə pil'ə ri) *adj.* [L *capillaris* < *capillus*, hair] 1 of or like a hair, esp. in being very slender 2 having a very small bore 3 in or of capillaries —*n.*, *pl.* *-lar-ies* 1 a tube with a very small bore: also **capillary tube** 2 any of the tiny blood vessels normally connecting the smallest arteries (*arterioles*) with the smallest veins (*venules*)

**capillary attraction** a force that is the resultant of adhesion, cohesion, and surface tension in liquids which are in contact with solids, as in a capillary tube: when the cohesive force is greater, the surface of the liquid tends to rise in the tube, as with mercury; when the adhesive force is greater, the surface tends to be depressed, as with water: also **capillary action**

**cap-i-tal**<sup>1</sup> (kap'ət 'l) *adj.* [ME & OFr < L *capitalis*, of the head < *caput*, HEAD] 1 involving or punishable by death (originally by decapitation) [a capital offense] 2 most important or most serious; principal; chief [a capital virtue] 3 of most political importance, as being the seat of government [a capital city] 4 of or having to do with capital, or wealth 5 first-rate; excellent [a capital idea] See also CAPITAL LETTER —*n.* 1 CAPITAL LETTER 2 a city or town that is the official seat of government of a state, nation, etc. 3 a city where a certain industry, activity, etc. is centered [the rubber capital] 4 wealth (money or property) owned or used in business by a person, corporation, etc. 5 an accumulated stock of such wealth or its value 6 wealth, in whatever form, used or capable of being used to produce more wealth 7 any source of benefit or assistance 8 [often C-] capitalists collectively: distinguished from LABOR 9 [often C-] *Accounting* a) the net worth of a business; amount by which the assets exceed the liabilities b) the face value of all the stock issued or authorized by a corporation —**SYN.** CHIEF —**make capital of** to make the most of; exploit

**cap-i-tal**<sup>2</sup> (kap'ət 'l) *n.* [ME < OFr *chapitel* < L *capitellum*, dim. of *caput*, HEAD] the top part of a column or pilaster: see COLUMN, *illus.*

**capital account** 1 an account of the total capital invested in fixed assets by the owners of a business, including real estate, machinery, etc., but excluding current or operating expenses 2 *Accounting* the summed difference between the assets and liabilities of a business on any given date

**capital assets** any assets, tangible or intangible, that are held for long-term investment

**capital expenditure** money spent for replacing and improving business facilities

use something to  
**capital letter** a  
sentence or prop  
**capital levy** a  
levied in addition  
**cap-i-tally** (kap'  
very well

**capital punish**  
**capital ship** [H  
than an aircraft  
eight inches

**capital stock**  
tible shares 2  
issued shares of  
**capital surplus**  
direct earnings  
received by a co  
stated value

**cap-i-tate** (kap'  
HEAD] 1 enlarg  
ers

**cap-i-ta-tion** (ka  
or fee of so much

**Cap-i-to-l**<sup>1</sup> (kap'a  
of Jupiter in Ro  
temple of Jupit  
building in whic  
[usually C-] the

**Cap-i-to-l**<sup>2</sup> (kap'a  
**Capitol Hill** th  
Capitol building  
the U.S. govern

**Cap-i-to-line**<sup>1</sup> (k  
Capitoline hill

**Cap-i-to-line**<sup>2</sup> (k

**ca-pi-tu-lar** (ka-  
*capitularis* < L  
heading, dim. o  
order

**ca-pi-tu-lary** (k-  
ordinance or a  
Frankish kings

**ca-pi-tu-late** (ka-  
*capitulatus*, pp  
arrange conditi  
enemy) on pres  
give up; stop re

**ca-pi-tu-la-tion**  
*capitulatio*: see  
2 the act of cap  
taining terms o  
enant

**ca-pi-tu-lum** (ka-  
L dim. of *capu*  
home it



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## What Is Business Capital?

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Business capital is an accounting term used to describe money invested in the business.

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### Article Details

- Written By: Carol Francois
- Edited By: Bronwyn Harris
- Last Modified Date: 24 October 2014
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*Business capital* has two meanings. The first is an accounting term used to describe money invested in the business. The second is a marketing term used to describe the value of the company. This usage is not strictly accurate, but is very common in the business media. The true value of a company is a combination of the [balance sheet](#) and goodwill.

The amount of business capital reported on a company's financial statements is based on the total amount of funds in the equity account. When the firm or company is first established, all the funds invested in the start up are allocated to owner or shareholder's equity. As more money is invested, this value increases. At the end of every year, the total net profit or loss is allocated to this account, either increasing or decreasing the value of the firm.

There are three sources of business capital: personal investment by the owners, outside investors, and the sale of [shares](#) in the company. All three options have distinct benefits and risks. The primary risk is the loss of money invested in the company, should it stop operations or does not record a profit.

Personal investment in a business can be both time and cash. The time the owner invests in the firm is critical to the success, but it is not allocated to the capital of the business. Only cash investments increase the business capital.

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Outside investors can take the role of angel investors or silent partners. An angel investor provides capital or cash into a business to save it from financial issues. In return, they claim a percentage of all sales and a portion of the ownership. Silent partners provide capital, but do not become involved in the operation of the business. They typically requirement payment in quarterly or annual payments of both the principle and interest.

A company can also increase their capital by selling shares of stock in the company. Each stock purchase increases the cash available to the business while providing a small ownership share. The more shares that are owned by one particular institution or person, the greater influence they have over operations.

Once the funds are received, business capital can be used to purchase new equipment, pay for space, hire staff or met any other operational needs. It is important to note that all investors require a return on their investment in cash payment terms. Review the options available and select the one that works best for your firm.

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